



Commonwealth of Kentucky

MASTER AGREEMENT

IMPORTANT

Show Doc ID number on all packages, invoices and correspondence.

<b>Doc Description:</b> 2010 TRACTOR AND MOWER - ALAMO SALES (RFB 758 0700001787)			
<b>Doc ID No:</b> MA 758 0700002308 4		<b>Proc Folder:</b> 723346	
<b>Procurement Type:</b> Standard Goods			
<b>Effective Date:</b> 2007-10-24	<b>Expiration Date:</b> 2010-10-23	<b>Not To Exceed Amount</b>	
<b>Administered By:</b> MICHAEL GUSTAFSON		<b>Cited Authority:</b> FAP111-35-00-G	
<b>Telephone:</b> 502-564-4510		<b>Issued By:</b> Michael Gustafson	

**Reason For Modification:** MODIFICATION #3 (OCTOBER 26, 2009) -

This Modification is to Renew the Master Agreement for an additional year in accordance with the Terms and Conditions of the Master Agreement. The Vendor is submitting their new List Pricing and they will retain the same percentage discounts as was on the original Bid. The Vendor has also requested to add the Whayne Supply locations as new Authorized Secondary Vendors:

- 5 VC0000086517 WHAYNE SUPPLY COMPANY
- 6 VC0000086507 WHAYNE SUPPLY CO
- 7 VC0000086508 WHAYNE SUPPLY CO
- 8 VC0000086509 WHAYNE SUPPLY CO
- 9 VC0000086510 WHAYNE SUPPLY CO
- 10 VC0000086511 WHAYNE SUPPLY COMPANY
- 11 VC0000086512 WHAYNE SUPPLY
- 12 VC0000086513 WHAYNE SUPPLY CO
- 13 VC0000086514 WHAYNE SUPPLY
- 14 VC0000086515 WHAYNE SUPPLY
- 15 VC0000086516 WHAYNE SUPPLY COMPANY
- 16 VC0000086518 WHAYNE SUPPLY
- 17 VC0000086519 WHAYNE SUPPLY

The Vendor Renewal Agreement Form, Line Item pricing and option information, and new Dealer documentation are on file in the Bid File in the Bid File Room.

The following additional Terms are added with regard to using any Federal Stimulus (ARRA) funding for these items.

V E N D O R	ALAMO SALES CORP		
	1502 E WALNUT ST		
	SEQUIN	TX	78155
	US		
V E N D O R	CMI EQUIPMENT SALES		
	2405 DICKERSON RD		
	PO BOX 78098		
	NASHVILLE	TN	37207
	US		

V E N D O R	INGRAM TRUCK AND TRACTOR  PO BOX 1249 HWY 25 NORTH EAST BERNSTADT KY 40729 US
V E N D O R	NEW ALBANY TRACTOR INC  725 SCRIBNER DR  NEW ALBANY IN 47150 US
V E N D O R	WHAYNE SUPPLY COMPANY  195 LISLE INDUSTRIAL AVE  LEXINGTON KY 40511 US
V E N D O R	WHAYNE SUPPLY CO  195 LISLE INDUSTRIAL AVE  LEXINGTON KY 40511 US
V E N D O R	WHAYNE SUPPLY CO  PO BOX 1123  LEXINGTON KY 40589 US
V E N D O R	WHAYNE SUPPLY CO  Department 8326  Carol Stream IL 60122-8326 US

V E N D O R	WHAYNE SUPPLY CO		
	PO BOX 35900		
	LOUISVILLE	KY	40232-5900
	US		

V E N D O R	WHAYNE SUPPLY COMPANY		
	12251 US ROUTE 60 P O BOX 11		
	78		
	ASHLAND	KY	41105
	US		

V E N D O R	WHAYNE SUPPLY		
	410 ROY CAMPBELL DR		
	HAZARD	KY	41701
	US		

V E N D O R	WHAYNE SUPPLY CO		
	1600 NORTH 8TH ST		
	PADUCAH	KY	42001
	US		

V E N D O R	WHAYNE SUPPLY		
	651 US 31W BYPASS		
	BOWLING GREEN	KY	42101
	US		

V E N D O R	WHAYNE SUPPLY		
	2200 SOUTH KENTUCKY AVE		
	CORBIN	KY	40701
	US		

V E N D O R	WHAYNE SUPPLY COMPANY		
	Department 8326		
	Carol Stream	IL	60122-8326
	US		

V E N D O R	WHAYNE SUPPLY									
	2420 E LYNCH RD									
	EVANSVILLE			TN		47711				
	US									

V E N D O R	WHAYNE SUPPLY		
	1400 CECIL AVE		
	PO BOX 35900		
	LOUISVILLE	KY	40211
	US		

Line	CL Description	Delivery Days	Quantity	Unit Issue	Unit Price	Contract Amt	Total Price
1	2010 TRACTOR AND MOWER - ALAMO SALES		0.00		0.00000	0.00	0.00

Extended Description

2010 TRACTOR AND MOWER - ALAMO SALES

Total Order Amount:	0.00
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## **PREAMBLE**

*To the extent that this contract or grant involves the use of American Recovery and Reinvestment Act of 2009, Pub. L. 111-5 ("ARRA") funds, the following terms and conditions apply.*

*For the purposes of applying these terms and conditions, the following definitions apply:*

- I. A "prime recipient" is a non-Federal entity that receives Recovery Act funding as Federal awards in the form of grants, loans, or cooperative agreements directly from the Federal government.*
- II. A "subrecipient" is a non-Federal entity that expends Federal awards received from another entity to carry out a Federal program but does not include an individual who is a beneficiary of such a program.*
- III. A "vendor" is defined as a dealer, distributor, merchant, or other seller providing goods or services that are required for the conduct of a Federal program. Prime recipients or subrecipients may purchase goods or services needed to carry out the project or program from vendors. Vendors are not awarded funds by the same means as subrecipients and are not subject to the terms and conditions of the Federal financial assistance award.*

*The vendor or subrecipient specifically agrees to comply with each of the terms and conditions contained herein.*

*The vendor or subrecipient understand and acknowledges that the federal stimulus process is evolving and that new requirements for ARRA compliance may still be forthcoming from federal government and the Commonwealth of Kentucky. Accordingly, the subrecipient/vendor specifically agrees that both it and any subgrantees/subcontractors will comply with all such requirements during the contract period.*

## **AVAILABILITY OF FUNDING**

Vendor/subrecipient agrees that programs supported with temporary federal funds made available by the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, will not be continued with state financed appropriations once the temporary federal funds are expended.

## **BUY AMERICAN REQUIREMENT (IF APPLICABLE)**

Vendor/subrecipient agrees that in accordance with ARRA, Section 1605, neither vendor/subrecipient or its subcontractors/subgrantees will use ARRA funds for a project for the construction, alternation, maintenance, or repair of a public building or public work unless all of the iron, steel and manufactured goods used in the project are produced in the United States in a manner consistent with United States obligations under international agreements. The

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vendor/subrecipient understands that this requirement may only be waived by the applicable federal agency in limited situations as set out in ARRA, Section 1605.

## **CONFLICTING REQUIREMENTS**

Vendor/subrecipient agrees that, to the extent ARRA requirements conflict with Commonwealth of Kentucky requirements, the ARRA requirements shall control.

## **FALSE CLAIMS ACT**

Vendor/subrecipient agrees that it shall promptly refer to an appropriate federal inspector general any credible evidence that a principal, employee, agent, subgrantee, subcontractor or other person has committed a false claim under the False Claims Act or has committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct involving those funds.

## **ENFORCEABILITY**

Vendor/subrecipient agrees that if the vendor/subrecipient or one of its subcontractors/subgrantees fails to comply with all applicable federal and state requirements governing the use of ARRA funds, the Commonwealth of Kentucky may withhold or suspend, in whole or in part, funds awarded under the program, or recover misspent funds following an audit. This provision is in addition to all other remedies available to the Commonwealth of Kentucky under all applicable state and federal laws.

## **INSPECTION OF RECORDS**

Vendor/subrecipient agrees that it shall permit the United States Comptroller General or his representative or the appropriate inspector general appointed under section 3 or 8G of the Inspector General Act of 1978 or his representative to: (1) examine any records that directly pertain to, and involve transactions relating to, this contract; and (2) interview any officer or employee of vendor/subrecipient or any of its subcontractors/subgrantees regarding the activities funded with funds appropriated or otherwise made available by the ARRA.

## **JOB POSTING REQUIREMENTS**

Vendors/subrecipients who receive ARRA funded contracts are required to post jobs created and retained as a result of stimulus funds on the Commonwealth of Kentucky Job Bank at: <https://e3.ky.gov/>

## **PROHIBITION ON USE OF ARRA FUNDS**

Vendor/subrecipient agrees that none of the funds made available under this contract may be used for any casino or other gambling establishment, aquarium, zoo, golf course, swimming pools, or similar projects.

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## REPORTING REQUIREMENTS

Pursuant to Section 1512 of the ARRA, entities receiving ARRA funds must submit reports to the federal government no later than ten (10) calendar days after the end of each calendar quarter. This report must contain the information outlined below.

Accordingly, each subrecipient agrees to provide the Commonwealth with the following information in a timely manner:

- a. Subrecipient's DUNS number;
- b. Award number or other identifying number assigned by the prime recipient;
- c. The total amount of ARRA funds received by subrecipient during the reporting period;
- d. The amount of ARRA funds that were expended or obligated during the reporting period;
- e. A detailed list of all projects or activities for which ARRA funds were expended or obligated, including:
  - i. the name of the project or activity;
  - ii. a description of the project or activity;
  - iii. an evaluation of the completion status of the project or activity; and
  - iv. an estimate of the number of jobs created and the number of jobs retained by the project or activity;
  - v. the primary place of performance of the subaward, including the city, state, congressional district and country;
  - vi. The names and total compensation of the five most highly compensated officers of the company if it received: 1) 80% or more of its annual gross revenues in Federal awards; and 2) \$25M or more in annual gross revenue from Federal awards.
- f. Any other information reasonably requested by the Commonwealth or required by state or federal law or regulation.

Each vendor must supply their DUNS number and an estimate of the number of jobs created and number of jobs retained as a result of the award of ARRA funds.

OMB Memorandum M-09-21 dated June 22, 2009 outlines the standard data elements and federal implementation guidance for use in complying with the reporting requirements under Section 1512 of the ARRA.

## SEGREGATION OF FUNDS

Vendor/subrecipient agrees that it shall segregate obligations and expenditures of Recovery Act funds from other funding. No part of funds made available under the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, may be comingled with any other funds or used for a purpose other than that of making payments for costs allowable under the ARRA.

## SUBCONTRACTOR/SUBGRANTEE REQUIREMENTS

Vendor/subrecipient agrees that it shall include these standard terms and conditions, including

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this requirement, in any of its subcontracts or subgrants in connection with projects funded in whole or in part with funds available under the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5.

## **WAGE REQUIREMENTS (IF APPLICABLE)**

Vendor/subrecipient agrees that, in accordance with Section 1606 of the ARRA, both it and its subcontractors shall fully comply with this section in that, notwithstanding any other provision of law, and in a manner consistent with the other provisions of the ARRA, all laborers and mechanics employed by contractors and subcontractors on projects funded in whole or in part with funds available under the ARRA shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality, as determined by the United States Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40 of the United States Code. The Secretary of Labor's determination regarding the prevailing wages applicable in the Commonwealth of Kentucky are located at: <http://www.gpo.gov/davisbacon/ky.html>

## **WHISTLEBLOWER PROTECTION**

Vendor/subrecipient agrees that both it and its subcontractors/subgrantees shall comply with Section 1553 of the ARRA, which prohibits all non-federal Vendor/subrecipients of ARRA funds, including the Commonwealth of Kentucky, and all contractors and grantees of the Commonwealth of Kentucky, from discharging, demoting or otherwise discriminating against an employee for disclosures by the employee that the employee reasonably believes are evidence of (1) gross mismanagement of a contract or grant relating to ARRA funds; (2) a gross waste of ARRA funds; (3) a substantial and specific danger to public health or safety related to the implementation or use of ARRA funds; (4) an abuse of authority related to implementation or use of ARRA funds; or (5) a violation of law, rule, or regulation related to an agency contract (including the competition for or negotiation of a contract) or grant, awarded or issued relating to ARRA funds. Vendor/subrecipient agrees that it and its subcontractors/subgrantees shall post notice of the rights and remedies available to employees under Section 1553 of Title XV of Division A of the ARRA.

### **VENDOR CONTACT INFORMATION:**

**MS. JAMIE WILSON**

**ALAMO SALES CORPORATION**

1502 East Walnut Street

Sequin, TX 78155

Toll Free Phone #: (800) 882-5762 or (800) 356-6286

Phone #: (830) 372-9517

Fax #: (800) 322-5041

E-Mail: [jwilson@alamo-industrial.com](mailto:jwilson@alamo-industrial.com) or Brian Dunleavy at [bdunleavy@alamo-industrial.com](mailto:bdunleavy@alamo-industrial.com)

Remit To Address: Alamo Sales Corporation, 1502 East Walnut, Sequin, TX 78155,

POC: Zane Witworth at (800) 882-5762.

**Company Website:** <http://www.alamo-industrial.com>

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**POD (PARTS ON DEMAND) CONTACT INFORMATION:**

**MS. MARY ANDREWS**

**Integrated Supply Manager**

**P.O.D. Contract and Process Manager**

**ALAMO SALES CORPORATION**

1502 East Walnut Street

Seguin, TX 78155

Phone #: (830) 372-9633

Cell Phone #: (830) 481-4818

Fax #: (830) 379-4363

Email: [mandrews@alamo-group.com](mailto:mandrews@alamo-group.com)

**POD (PARTS ON DEMAND) CONTACT INFORMATION:**

**MR. JASON EDWARDS**

**Distribution Manager**

**P.O.D. Demand and Implementation Manager**

**ALAMO SALES CORPORATION**

1502 East Walnut Street

Seguin, TX 78155

Phone #: (830) 372-9544

Fax #: (830) 379-4363

Email: [jedwards@alamo-group.com](mailto:jedwards@alamo-group.com)

**COMMONWEALTH CONTACT INFORMATION:**

**MIKE GUSTAFSON, CPPO, CPPB**

Strategic Procurement Specialist II

Office of Procurement Services (OPS)

Finance and Administration Cabinet

Room 096 New Capitol Annex

702 Capital Avenue

Frankfort, KY 40601-3448

Phone #: (502) 564-5945

Main Office Phone #: (502) 564-4510

Genifax Desktop #: (502) 696-3832

Office Fax #: (502) 564-1434

E-mail: [mike.gustafson@ky.gov](mailto:mike.gustafson@ky.gov)

**MODIFICATION #3 (OCTOBER 26, 2009) -**

This Modification is to Renew the Master Agreement for an additional year in

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accordance with the Terms and Conditions of the Master Agreement. The Vendor is submitting their new List Pricing and they will retain the same percentage discounts as was on the original Bid. The Vendor has also requested to add the Whayne Supply locations as new Authorized Secondary Vendors:

5 VC0000086517 WHAYNE SUPPLY COMPANY  
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16 VC0000086518 WHAYNE SUPPLY  
17 VC0000086519 WHAYNE SUPPLY

The Vendor Renewal Agreement Form, Line Item pricing and option information, and new Dealer documentation are on file in the Bid File in the Bid File Room.

The following additional Terms are added with regard to using any Federal Stimulus (ARRA) funding for these items.

## 1. PREAMBLE

To the extent that this Master Agreement or Contract involves the use of American Recovery and Reinvestment Act of 2009, Pub. L. 111-5 '(ARRA)' funds, the following terms and conditions apply.

For the purposes of applying these terms and conditions, the following definitions apply:

- I. A "prime recipient" is a non-Federal entity that receives Recovery Act funding as Federal awards in the form of grants, loans, or cooperative agreements directly from the Federal government.
- II. A "sub-recipient" is a non-Federal entity that expends Federal awards received from another entity to carry out a Federal program but does not include an individual who is a beneficiary of such a program.

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III. A "Vendor" is defined as a dealer, distributor, merchant, or other seller providing goods or services that are required for the conduct of a Federal program. Prime recipients or sub-recipients may purchase goods or services needed to carry out the project or program from vendors. Vendors are not awarded funds by the same means as sub-recipients and are not subject to the terms and conditions of the Federal financial assistance award.

The Vendor or sub-recipient specifically agrees to comply with each of the terms and conditions contained herein.

The Vendor or sub-recipient understand and acknowledges that the federal stimulus process is evolving and that new requirements for ARRA compliance may still be forthcoming from the Federal government and from the Commonwealth of Kentucky. Accordingly, the sub-recipient / Vendor specifically agree that both it and any sub-grantees / subcontractors will comply with all such requirements during the contract period.

## 2. AVAILABILITY OF FUNDING

Vendor / sub-recipient agree that programs supported with temporary federal funds made available by the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, will not be continued with state financed appropriations once the temporary federal funds are expended.

## 3. BUY AMERICAN REQUIREMENT (IF APPLICABLE)

Vendor / sub-recipient agrees that in accordance with ARRA, Section 1605, neither the Vendor / sub-recipient or its subcontractors / sub-grantees will use ARRA funds for a project for the construction, alternation, maintenance, or repair of a public building or public work unless all of the iron, steel and manufactured goods used in the project are produced in the United States in a manner consistent with United States obligations under international agreements. The Vendor / sub-recipient understand that this requirement may only be waived by the applicable federal agency in limited situations as set out in ARRA, Section 1605.

## 4. CONFLICTING REQUIREMENTS

Vendor / sub-recipient agree that, to the extent ARRA requirements conflict with Commonwealth of Kentucky requirements, the ARRA requirements shall control.

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## 5. FALSE CLAIMS ACT

Vendor / sub-recipient agree that it shall promptly refer to an appropriate federal Inspector General any credible evidence that a principal, employee, agent, sub-grantee, sub-contractor or other person has committed a false claim under the False Claims Act or has committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct involving those funds.

## 6. ENFORCEABILITY

Vendor / sub-recipient agree that if the Vendor / sub-recipient or one of its sub-contractors / sub-grantees fails to comply with all applicable federal and state requirements governing the use of ARRA funds, the Commonwealth of Kentucky may withhold or suspend, in whole or in part, funds awarded under the program, or recover mis-spent funds following an audit. This provision is in addition to all other remedies available to the Commonwealth of Kentucky under all applicable state and federal laws.

## 7. INSPECTION OF RECORDS

Vendor / sub-recipient agree that it shall permit the United States Comptroller General or his representative or the appropriate Inspector General appointed under Section 3 or 8G of the Inspector General Act of 1978 or his representative to: (1) examine any records that directly pertain to, and involve transactions relating to, this Master Agreement / Contract; and (2) interview any officer or employee of Vendor / sub-recipient or any of its sub-contractors / sub-grantees regarding the activities funded with funds appropriated or otherwise made available by the ARRA.

## 8. JOB POSTING REQUIREMENTS

Vendors / sub-recipients who receive ARRA funded Master Agreement / Contracts are required to post jobs created and retained as a result of stimulus funds on the Commonwealth of Kentucky Job Bank at: <https://e3.ky.gov/>

## 9. PROHIBITION ON USE OF ARRA FUNDS

Vendor / sub-recipient agree that none of the funds made available under this Master

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Agreement / Contract may be used for any casino or other gambling establishment, aquarium, zoo, golf course, swimming pools, or similar projects.

## 10. REPORTING REQUIREMENTS

Pursuant to Section 1512 of the ARRA, entities receiving ARRA funds must submit reports to the federal government no later than ten (10) calendar days after the end of each calendar quarter. This report must contain the information outlined below.

Accordingly, each sub-recipient agrees to provide the Commonwealth with the following information in a timely manner:

- a. Sub-recipient's DUNS number;
- b. Award number or other identifying number assigned by the prime recipient;
- c. The total amount of ARRA funds received by sub-recipient during the reporting period;
- d. The amount of ARRA funds that were expended or obligated during the reporting period;
- e. A detailed list of all projects or activities for which ARRA funds were expended or obligated, including:
  - i. the name of the project or activity;
  - ii. a description of the project or activity;
  - iii. an evaluation of the completion status of the project or activity; and
  - iv. an estimate of the number of jobs created and the number of jobs retained by the project or activity;
  - v. the primary place of performance of the sub-award, including the city, state, congressional district and country;
  - vi. The names and total compensation of the five most highly compensated officers of the company if it received: 1) 80% or more of its annual gross revenues in Federal awards; and 2) \$25M or more in annual gross revenue from Federal awards.

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f. Any other information reasonably requested by the Commonwealth or required by State or Federal law or regulation.			

Each Vendor must supply their DUNS number and an estimate of the number of jobs created and number of jobs retained as a result of the award of ARRA funds.

OMB Memorandum M-09-21 dated June 22, 2009, outlines the standard data elements and federal implementation guidance for use in complying with the reporting requirements under Section 1512 of the ARRA.

## 11. SEGREGATION OF FUNDS

Vendor / sub-recipient agree that it shall segregate obligations and expenditures of Recovery Act funds from other funding. No part of funds made available under the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, may be comingled with any other funds or used for a purpose other than that of making payments for costs allowable under the ARRA.

## 12. SUBCONTRACTOR / SUBGRANTEE REQUIREMENTS

Vendor / sub-recipient agrees that it shall include these standard terms and conditions, including this requirement, in any of its sub-contracts or sub-grants in connection with projects funded in whole or in part with funds available under the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5.

## 13. WAGE REQUIREMENTS (IF APPLICABLE)

Vendor / sub-recipient agree that, in accordance with Section 1606 of the ARRA, both it and its sub-contractors shall fully comply with this section in that, notwithstanding any other provision of law, and in a manner consistent with the other provisions of the ARRA, all laborers and mechanics employed by Contractors and sub-contractors on projects funded in whole or in part with funds available under the ARRA shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality, as determined by the United States Secretary of Labor in accordance with sub-chapter IV of chapter 31 of Title 40 of the United States Code. The Secretary of Labor's determination regarding the prevailing wages applicable in the Commonwealth of Kentucky are located at: <http://www.gpo.gov/davisbacon/ky.html>

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#### **14. WHISTLEBLOWER PROTECTION**

Vendor / sub-recipient agree that both it and its sub-contractors / sub-grantees shall comply with Section 1553 of the ARRA, which prohibits all non-federal Vendor / sub-recipients of ARRA funds, including the Commonwealth of Kentucky, and all Contractors and grantees of the Commonwealth of Kentucky, from discharging, demoting or otherwise discriminating against an employee for disclosures by the employee that the employee reasonably believes are evidence of (1) gross mismanagement of a contract or grant relating to ARRA funds; (2) a gross waste of ARRA funds; (3) a substantial and specific danger to public health or safety related to the implementation or use of ARRA funds; (4) an abuse of authority related to implementation or use of ARRA funds; or (5) a violation of law, rule, or regulation related to an agency contract (including the competition for or negotiation of a contract) or grant, awarded or issued relating to ARRA funds. Vendor / sub-recipient agrees that it and its sub-contractors / sub-grantees shall post notice of the rights and remedies available to employees under Section 1553 of Title XV of Division A of the ARRA.

#### **MODIFICATION #2 (OCTOBER 27, 2008) -**

This Modification is to Renew the Master Agreement for an additional year per the Terms and Conditions of the Master Agreement. The Vendor has requested and received approval for a price increase of approximately 7% for their mower product Line Items. There has been no change in their Authorized Secondary Vendors / Dealers.

The Vendor's Renewal Agreement Form and their pricing documentation are on file in the Bid File in the Bid File Room.

#### **MODIFICATION #1 (FEBRUARY 8, 2008) -**

This Modification is to add a section to this Master Agreement regarding a Repair Parts program offered by the Vendor, Alamo, at no cost to the Commonwealth. Alamo's Parts On Demand (POD) Program is being coordinated between Alamo, KYTC Division of Heavy Equipment, and the Finance and Administration Cabinet's Office of Procurement Services (OPS). Currently a Memorandum of Understanding (MOU) is being drafted between the parties. This MOU, once finalized and signed, will contain greater details as to the order, inventory, and payment procedures, responsibilities of both parties, and other necessary information in order to make this Program run efficiently and effectively for all parties concerned. Once completed, this MOU will be filed in the Bid File and will become a part of this Master Agreement. A separate Line Item is being added to the Catalog of Line Items for Repair parts in total. Repair parts will be purchased, at time of use, at 35% off of the Vendor's List Price.

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The initial and follow on documentation for this POD Program is on file in the Bid File in the Bid File Room.

## **TERMS AND CONDITIONS** **MASTER AGREEMENT**

### **Section 1**

#### **Scope of Contract**

**This Master Agreement is for the Vendor to provide the Commonwealth with Agricultural-type Tractors and Mowers as well as to other State Agencies and Local Governments (as may be needed). Additional Specification and requirement information regarding the Agricultural Tractors and Mowers is available in Section 8 - Specifications.**

### **Section 2**

#### **Purpose**

The purpose of this Master Agreement is to request that the Vendor provides these items under Master Agreement to the Commonwealth of Kentucky. It also is to provide the minimum specifications and requirements for the purchase (and lease and / or rental) of the equipment that meets the needs and desires of the Agency. This Master Agreement establishes essential criteria for the design, performance, capabilities, and appearance of the equipment.

### **Section 3**

#### **Initial Contract Period**

The Office of Procurement Services (OPS) issues this Master Agreement (MA) for the State of Kentucky. This Master Agreement **shall be for a period of one (1) year from the date of contract award or the effective date of the Master Agreement.**

### **Section 4**

#### **Renewal Clause**

This Master Agreement **may be renewed at the completion of the initial contract period for four (4) additional one (1) year periods.** This renewal shall have the written approval of the Vendor and the Office of Procurement Services.

### **Section 5**

#### **Renewal Clause – Optional Renewal Period**

As this Master Agreement provides for an optional renewal period, the Commonwealth of Kentucky reserves the right to renegotiate any terms and / or conditions as may be necessary to meet requirements for the extended period. The Vendor will be advised of any proposed revisions prior to the renewal periods. In the event proposed revisions

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cannot be agreed upon, either party shall have the right to withdraw without prejudice from either exercising the option or continuing the Master Agreement in an extended period.

## Section 6

### Agency and Political Subdivision's Use of the Master Agreement

This Master Agreement shall be for use by the Commonwealth of Kentucky. Under Kentucky Statutes, provisions are made to allow for use of this Master Agreement by all State Agencies, Local Governments (all Cities and Counties), local School Districts, and Universities.

**By responding to Request For Bid (RFB) / Solicitation RFB 758 0700001787 the Vendor agrees beforehand to offer their products and pricing to other authorized users.** These entities may participate in All-State Agency Master Agreements to the same extent as Agencies of the Commonwealth.

## Section 7

### EEO Requirements

The EEO reporting process has been revised to address statutory revisions that took effect June 26, 2007 (reference House Bill (HB) 334.) The revisions include the following:

- 1) increased the \$250,000 contract exemption threshold to \$500,000 (as such, only contracts valued at more than \$500,000 will be subject to contract compliance reviews).
- 2) reduced EEO reporting requirements from twice to once yearly.
- 3) eliminated the requirement for Vendors to provide detailed information about each employee (specifically, the Employee Data Sheet will no longer be a required form).
- 4) clarified that the availability and utilization of female employees will also be used to determine compliance
- 5) clarified that the equal employment provisions may be met, in part, by subcontracting to firms owned by women
- 6) Vendor should continue to send copies of the EEO forms to the Finance and Administration Cabinet's (FAC) Office of EEO and Contract Compliance (EEO / CC) for review and approval. No award will become effective until all forms are satisfactorily submitted and EEO / CC has certified compliance.
- 7) The EEO forms, which must be referenced in Solicitations issued on or after June 26,

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2007, are: EEO-1: Employer Information Report, Affidavit of Intent to Comply; and Sub-Vendor Report. **Further, the EEO forms and bid package letter (see attached) should be posted on the Web effective June 26, 2007.**

8) Updated Solicitation Language - Changes in EEO reporting requirements also affect the language currently included in Solicitations, etc. **This language must, at a minimum, advise Vendors of the following requirements: Failure to comply with the Act may result in non-award, withdrawal of award, cessation of contract payments, etc.**

9) Vendors / Vendors must submit the following documents in accordance with the requirements of the Solicitation - EEO-1: Employer Information Report, Affidavit of Intent to Comply and Sub-Vendor Report **OR a copy of the current Kentucky EEO Approval Letter issued by the Finance and Administration Cabinet, Office of EEO and Contract Compliance.**

10) Vendors may obtain copies of the required EEO documents from the Finance and Administration Cabinet's e-Procurement Web page under Standard Attachments and General Terms at the following site: <http://eprocurement.ky.gov>.

11) Vendors must advise each sub-Vendor with a subcontract of more than \$500,000 - of the sub-Vendor's obligation to comply with the Kentucky EEO Act. Further, Vendors are responsible for compiling EEO documentation from their sub-Vendors and submitting the documentation to the Finance and Administration Cabinet, Office of EEO and Contract Compliance (EEO/CC). (Note: contracts below the second tier are exempt from EEO reporting.)

12) Failure to complete, sign and submit all required documents will delay the award process as incomplete submissions will not be processed. **Further, alternate versions of the required documents will not be accepted or processed.**

13) Pursuant to KRS 45.610 (2), the Finance and Administration Cabinet, Office of EEO and Contract Compliance reserves the right to request additional information and / or documentation and to conduct on-site monitoring reviews of project sites and / or business facilities at any point for the duration of any Contract which exceeds \$500,000 to ascertain compliance with the Act and such rules, regulations and orders issued pursuant thereto.

All questions regarding EEO forms or contract compliance issues must be directed to the Finance and Administration Cabinet, Office of EEO and Contract Compliance via e-mail: [Finance.ContractCompliance@ky.gov](mailto:Finance.ContractCompliance@ky.gov) or via telephone at (502) 564-2874 or by fax at (502) 564-1055.

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## Section 8 Equipment Specifications

### **SUMMARY –**

In this Master Agreement, there are no equipment or model specifications per se. What the Commonwealth is requesting is a percentage discount off of the Manufacturer's complete (current and future models) equipment line to include basic equipment, attachments, options, and accessories. By obtaining the complete listing now, individual orders can be "built" in the Manufacturer / Dealers web site and then the percentage discount can be subtracted from the List price. This is why the Vendor won't see a request for a Model 123AB, 75 HP Tractor with 4 wheel drive (4WD), with PTO, and a roll-over-protection system (ROPS).

### **1.) GENERAL SPECIFICATIONS FOR TRACTORS, MOWERS, AND EQUIPMENT:**

This Master Agreement includes the following general types of products **but is not limited to these** and their associated attachments, options, accessories, and repair parts and service (training if available as well):

Agricultural Tractors (approximately 45 HP and larger)  
 Tractor-Mounted Brush / Tree Cutters  
 Rotary Cutters  
 Roll Harrows  
 Boom Mowers  
 Disk Mowers  
 Drum Mowers  
 Flail Mowers  
 Rotary Mowers  
 Sickle Mowers  
 Pulverizing Mulchers  
 Vegetation Shredders  
 Rotary Sickles

Certain agricultural related equipment may also be included in the Vendor's catalog. These may include, but not be limited to: balers, tillage equipment, wagons, planting & seeding, hay and forage, combines, and material telehandlers. These items would be primarily for the Department of Corrections Correctional Facility Farm programs as well as the Department of Fish & Wildlife's (F&W) Wildlife Management Areas (WMA).

Optional equipment, accessories and / or attachments, and repair parts shall include such things as blades, rollers, blowers, aerators, brooms, roll-over protection, roll bars,

0700002308 foam filled tires, etc.	<b>Document Phase</b> Final	<b>Document Description</b> 2010 TRACTOR AND MOWER - ALAMO SALES (RFB 758 0700001787)	<b>Page</b> <b>20 of 45</b>
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**The following types of equipment shall not be considered part of this Master Agreement:**

Backhoes

Construction Type Equipment

Lawn & Garden type Tractors and Mowers (smaller in size as well as less horsepower and were previously Bid out and awarded)

Skid Steers (previously Bid out and awarded)

**SPECIAL EQUIPMENT FEATURES AND REQUIREMENTS -**

When special features and requirements are required which do not appear on either the Tractor or Mower Manufacturer's price list, who will furnish them and how will their prices be quoted? For instance:

- A) Installation
- B) Bumper to protect front pump
- C) Fluid in tires
- D) Additional lights near top of roll bar
- E) Beacon strobe light
- F) Back up alarm
- G) Protective screen between roll bar
- H) Parts Book
- I) Service Manual

When an Agency requires special features and requirements which do not appear on either the Tractor or Mower manufacturer's price list, the Commonwealth recommends three (3) options that will allow for purchasing of these items.

- 1.) Include them in the 'build sheet' for the main piece of equipment and reduce the invoice price by whatever discounting amount that may apply.
- 2.) Use their ProCard (credit card) as payment similar to a stand alone Contract / purchase.
- 3) Complete a separate Contract for the awarding of these required items.

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*For example, if an Agency needs fluid in the tires (\$200) and orders 1 tractor (discounted price of \$30,000), the Agency will complete a Delivery Order for the one tractor for \$30,000, which will be invoiced to the Agency, and purchase the fluid for the tires on their Pro Card as a separate transaction for \$200. This will work as long as the Agency does not exceed their Pro Card authorization limit. Further, if an Agency orders 25 Tractors (\$30,000 each) and requires a total of \$29,000 worth of special features, they will complete the Delivery Order for the 25 Tractors for (\$750,000) which will be invoiced to the Agency. The \$29,000 of special features will be listed and itemized on a SEPARATE document (Award / Contract) which, once properly approved, will go to the Dealer as an order for those items to be installed on the Tractors prior to delivery. The Agency SHALL document on this separate document (Award / Contract) that these special feature items are required to be installed on the items ordered off of Tractor Master Agreement # MA 758 0700002308. The authority for the Agency to contract / order these special features through this process is FAP 111-09-00, Competitive Bidding Exceptions: Standing Determination of not Practicable or Feasible - Section 12 - Other Goods and Services.*

**Multi-unit orders can be accomplished through a separate Line Item on the Master Agreement similar to the SAMPLE below:**

#### **Brand X**

<b>1 unit</b>	<b>28%</b>
<b>2 - 4 units</b>	<b>30%</b>
<b>5 - 9 units</b>	<b>31%</b>
<b>10 units or more</b>	<b>32%</b>

Vendors quote percentage off of list based on the number of units ordered. In this instance, separate Line Items would be needed for each group above on the Line Item Catalog spreadsheet.

The Commonwealth reserves the right to negotiate for any additional discounts on a multi-unit order. This is also stated in Section 26.

## **2.) MANUFACTURER REQUIREMENTS:**

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**A. Manufacturer shall provide information on the capability of:**

- 1) Performing Lease / Rent vs. Buy (primarily for Tractors) with State Agencies.
- 2) Use of biodiesel fuel blends in engines (primarily for tractors) and if there are any Warranty issues (or anything else) as a result of using this type of fuel.
- 3) The use of re-refined engine oil (primarily for tractors) and if there are any Warranty issues (or anything else) as a result of using this type of oil.

**State Agencies may have legal mandates to use (increasing amounts of) biodiesel and re-refined engine oil in their equipment.**

**B. Previous Quantity Sold:**

There is also a "previous quantity sold" requirement of 750 units since the start of production.

**C. Rental / Lease Programs with Dealers:**

- 1) Dealers and / or Manufacturers may coordinate directly with an end user to initiate a Rental or Lease agreement.
- 2) Equipment Rentals / Leases may be entered in the Line Item Catalog with dollar amounts or they may reference a Line Item and the Rental / Lease Rates / Terms may be jointly reviewed by the Dealer and ordering Agency / Local Government and agreed upon.

**3.) A QUALIFIED MANUFACTURER SHALL MEET THE FOLLOWING CRITERIA:**

**For the terms of this Master Agreement, the following definition of what the Commonwealth considers a "Qualified Manufacturer" shall apply -**

**A) ALL Products shall meet all Industry Standards (per the American National Standards Institute (ANSI) and American Society of Agricultural Engineers (ASAE)) as well as any Federal and / or State standards. Equipment shall also be safety tested and approved and have applicable testing documentation available upon request.**

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B) **Previous Quantity Sold.** There is a previous quantity sold requirement of a total of a minimum of 750 units since the start of the Company's production. **A certified statement of the approximate number of units sold shall be submitted with the Bid Response. Should a Manufacturer not have met this requirement prior to Bid submission, they shall be considered non-responsive.**

C) **The Commonwealth requires Product Liability Insurance** in the amount of **\$10 million (\$10,000,000.00).** The Commonwealth also requires a Certificate of Insurance naming the Commonwealth of Kentucky as the third party insured prior to award of Contract. **Should a Manufacturer not have Product Liability Insurance that meets this limit, they shall be considered non-responsive.**

D) **Manufacturer shall have been in business for a minimum of five (5) years. A statement (or other documentation) of years in business shall be submitted with the Bid Response.**

E) Since the intent of the Master Agreement award is to award them to the Manufacturer rather than to a Dealer / Distributor, the Commonwealth does not intend to award a Master Agreement for, or purchase, those items that may be of questionable quality, product design or integrity, or with an unknown or unsatisfactory safety record.

F) This Master Agreement should in no way represent an 'approved by or recommended by' the Commonwealth, the Transportation Cabinet's Division of Heavy Equipment, or any other primary user of this type of equipment. The Manufacturer awarded this state wide Master Agreement is expected to be a good, reputable Vendor with quality equipment.

#### **4. AUTHORIZED (SECONDARY) TRACTOR / MOWER DEALER LISTING –**

The importance of the Authorized (Secondary) Tractor / Mower Dealer Listing is that **ONLY** those Dealers authorized by the Manufacturer are allowed to participate in the Master Agreement (MA). The Master Agreement shall be with the Manufacturer and not necessarily with the individual equipment Dealer's location. The Manufacturer must be able to guarantee that all authorized equipment Dealer locations will honor the State contract discounted pricing for the contracted items. The Master Agreement is awarded to you, the Manufacturer, with the understanding that the local Dealers are going to be involved quite heavily in the day-to-day activities. By having the Dealers loaded into our system, it allows our Agencies to make payments to the local Dealers as necessary.

The local Dealer (Secondary Vendor) **MUST** be:

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- A) on the Authorized Dealer List provided by the Manufacturer / Distributor to the Commonwealth Buyer,
- B) registered with the Finance and Administration Cabinet (FAC) prior to the Buyer being able to select them from this database into the actual Master Agreement.
- C) selected from the database and added to the Master Agreement (by the Buyer). This is how the Dealer is then allowed to be paid.

**Authorized Dealer information needed in an Excel format by the Buyer is:**

Use the following for Column Headings:

Company Name

Company Street Address

City

State

Zip

Phone #

Fax #

Point of Contact's Name

Point of Contact's Email address

FEIN #

Vendor Customer # (this will be either a VC or a VS followed by a 10-digit number.)

Vendor's website (if available)

Future plans include posting this Excel spreadsheet with all of the Secondary Dealer information onto the OPS website so that State Agency and Local Government personnel may access it to see which Dealers are on which Master Agreements and which is located closest to them. This will aid them in selecting a Dealer to contact and / or order from.

Should these Dealers not be entered into the system, payments cannot be authorized. The process by which the Buyer loads them into the database is to take them off of the Vendor's list and add them individually by using their Vendor Customer # (either a VC and 10 digit number or a VS and 10 digit number). Their FEIN number may also be used to identify and load them into the Master Agreement. If the Vendor provides the Buyer with 50 Dealers on their list, but the Buyer can only locate 45 of them in the database, the other 5 'floaters' will not be able to be added, or more importantly, be able to participate in the Master Agreement.

Dealers may use the FAC website at <http://eprocurement.ky.gov> to register with the State or to update their registration. Directions to the FAC website are:

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Go to <http://eprocurement.ky.gov>

Then click on 'Register' and it will allow you to register online and provide your company information. It will also allow you to enter an email address and Commodity Code choices so our email system will email you when a future Bid is released for some Commodity that you are interested in.

You may update your account by typing in your Login and Password should anything (area code, address, contact email, etc.) need updating.

If assistance is needed, contact the [Customer Resource Center](mailto:Finance.CRCGroup@mail.state.ky.us) by email at [Finance.CRCGroup@mail.state.ky.us](mailto:Finance.CRCGroup@mail.state.ky.us) or by phone (502) 564-9641 or toll-free (877) 973-HELP. The Help Desk is open from 8:00 AM until 5:00 PM EST Monday through Friday. This site registration is different than when the Vendor registered with the Kentucky Secretary of State's office to do business in the State. These are two different registrations. Theirs is to do business; OPS is to place orders and make payments and notify them of upcoming Solicitations, etc.

## **5. LINE ITEM CATALOG –**

**This Excel spreadsheet will contain the Manufacturer's complete product line or those items that the Manufacturer chooses to include.**

The FAC eProcurement Catalog website is at <http://eprocurement.ky.gov>. The Excel spreadsheet template to use is as follows:

- A) Vendor Customer number - please provide it if you have it.
- B) Supplier Part Number - limited to 32 characters and spaces. **Part numbers may not be duplicated.** Please add a '-1' or '-A' to differentiate your duplicated Line Items.
- C) Supplier Name - (your Company name) (limited to 25 characters and spaces.)  
The Buyer will pull this from the database when the Master Agreements are prepared.
- D) Commodity Code - (The Buyer will provide the Codes below that may be most useful.)
- E) Description - limited to 60 characters & spaces.

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- F) Extended Description - limited to 3,500 characters & spaces. It is most beneficial to have as much pertinent data in the Extended Description field as possible to aid an Agency in doing a search to locate those particular items they are looking for. This would include Manufacturer's name, equipment model name / number, horsepower (HP) rating, etc.
- G) Unit of Measure - most likely will be EACH.
- H) List Price - this can be listed as \$0.001 (system will round it to \$0.00). The pricing will be a percentage off of List price. There won't be any exact 'dollar and cents' prices.
- I) Delivery Days - enter a time, under normal circumstances, that delivery can be made. Please refer to Section 18 below for more info on Delivery times.

Note - By listing the items in **GROUPS** (by discount percentages), a minimum of Line Items need to be submitted and maintained. The benefit to doing it this way, is that if the Vendor adds a new model 4 months into the Master Agreement it will already be included (assuming it falls into the same discount percentage.) This method also lets an Agency 'build' the item that they need without having to find all of the subparts or combinations on the Master Agreement. The Agencies can work with the Dealer to design and build it and then take the percentage discount off of the list price to get the State net price.

If all of the equipment items, attachments, options, accessories, and repair parts fall into the same discount, then the Vendor would only need one Line Item for all of it.

The other way is to list **INDIVIDUALLY** each make, model, combination, part, etc. This can run into the hundreds / thousands of Line Items. This method is much more difficult to use, maintain, and update.

## **6. PAYMENT BY INVOICE OR PROCARD –**

Vendor Acceptance of State ProCard for Payment, the Commonwealth **REQUESTS that Manufacturer's / Vendors accept the State's ProCard** (State version of a business credit card) in instances where the purchased amount is within the Agency's authorized purchasing limits. State Agencies have different levels of ProCard purchasing authority. The ProCard may be set up with three types of limits – 1) single purchase limit, 2) maximum number of charges per month (or per day) limit, and 3) monthly total dollar limit. The card's magnetic strip is coded with the Agency's appropriate limit(s). Should the instance occur where a card is used to purchase an amount in excess of these limits, the Commonwealth will make payment and address the issue of exceeding the limit separately within the Agency. **The Vendor will be paid.**

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The Vendor does need to verify what level is authorized. This is accomplished by swiping the ProCard through the charge machine and receiving a purchase authorization (similar to using a personal credit card.) If an approval authorization is not received, do not complete the purchase transaction.

It is felt that most Dealer locations operate with a credit / debit card function as part of their day-to-day business. Should a Dealer not have the capacity for credit card transactions (either just doesn't use it or it is down for that day(s)), then the Dealer / Manufacturer will have to process payment through the invoice / check payment route.

## **7. PERTINENT INFORMATION FROM PAST BIDS THAT APPLIES TO THIS BID AS WELL:**

A) The **STATE Agency's** ProCard is a PNC Bank Visa card. For clarification, **State Agencies use the ProCard.** Local Governments, Schools, Universities may use their own version of a ProCard or a business credit card. The Commonwealth is unaware of what each of them maintains.

To the best of the Commonwealth's knowledge Visa does charge the Vendor their normal administrative fee for use of the card. The exact percentage is not known.

B) Will the Government Agency make the majority of their major purchases with the ProCard or is the ProCard to be used for Parts and Service?

This will depend on what their preset ProCard authorized limit is. Payment for equipment may either be by invoice (for larger dollar amount purchases) or by the State ProCard (if within the Agency's authorized limits.)

The ProCard is not necessarily required although many Agencies will want to use it for lower dollar items (repair parts, services, accessories, etc.) For one Agency, they may be able to purchase a \$15,000 tractor on their ProCard, while another Agency may be able to only purchase a \$2,400 item. It is anticipated that the lower dollar items (accessories, attachments, repair parts, and some options) may be purchased with the ProCard. Those smaller dollar after-sale items most likely could be ProCard purchases as well. It is anticipated that most major items will be purchased through use of an invoice.

C) **Vendor Question:** We would like to conduct business with the state on a Distributor level with the support of our Dealer network. The State of Kentucky is shared between two Distributors. We are working on this bid together with one

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common structure in mind. However, our areas of responsibility are defined by County. Could we identify in the Master Agreement the Counties that will be serviced by which Distributor?

**Commonwealth Response:** Yes. Prior to award of the Master Agreement, the Manufacturer / Distributor can provide the Commonwealth Buyer with the Excel listing of all Dealer locations, each Dealer will be added as an Authorized Vendor to their Master Agreement. A list can be attached to the Master Agreement as to which Dealers cover which Counties.

D) **Vendor Question:** In Section 22 of the Solicitation it states that payment may be made to Manufacturer or Dealer. If we are awarded the Contract, as the Manufacturer, we always want the payment to go to us, not the Dealer. Is that any problem?

**Commonwealth Response:** Payments may be made directly to the Manufacturer or the Dealer. Payment to the Manufacturer is not a problem. Payment can be made to either the Dealer or to the Manufacturer, whichever is appropriate for that Manufacturer's products. This can be set up in our database when the Master Agreement is established.

E) The product listing (catalog) may be as few as 1 Line Item or as many as you need. The more or less driving factor is the percentage discount. If everything (base equipment item, attachments, options, accessories, etc.) are all the same percentage off, then 1 Line Item would do, saying something to the effect of:

'All ACME brand Tractors (approximately 45 HP and larger) (or Mowers) to include base equipment items, attachments, options, accessories, etc., are 15% off of List Price. This pricing applies to all current as well as future items. Freight is / is not included in pricing. All Acme repair parts are at zero (0) percent discount.'

## **8. PRICING:**

It is not the intent of the Commonwealth to require Vendors to reproduce their pricing documents with the Kentucky discounts as well as the MSRP. The main objective of using the Excel spreadsheet is to simplify pricing (discounting) and ordering due to the huge number of combinations of options available for ordering. Again, if an Agency works with a Dealer and the item to be purchased

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is built in the Manufacturer's / Dealer's computer ordering system at a \$10,000 net price and the State discount is 15%, then the Agency (and the Dealer) should be able to know that that item will cost them \$8,500 when the discount percentage is applied.

## **9. DISTRIBUTION OF LITERATURE:**

Upon request, the Vendor shall furnish State agencies and other public bodies with descriptive literature, current website addresses for current product lines and specifications, and also for service information for Line Items awarded. The Vendor shall also be fully responsible for making distribution of catalogs and price lists to the State Agencies **WHEN REQUESTED BY THAT AGENCY. IT IS HIGHLY RECOMMENDED THAT INFORMATION BE MADE AVAILABLE ON THE MANUFACTURER'S WEBSITE TO MAINTAIN THE MOST CURRENT DATA AND MODELS.** This will also reduce any unnecessary copying and mailing costs.

## **10. PRODUCT LIABILITY INSURANCE:**

**There is a requirement that the Vendor provide a Certificate of Insurance in the amount of \$10,000,000 (minimum amount) stating that Product Liability is in effect.** The Commonwealth will maintain on file a copy of this Certificate of Insurance.

## **11. DOCUMENTS TO ACCOMPANY EQUIPMENT DELIVERY:**

- (1) Operator's Owners Manual.
- (2) Copy of Customer Purchase Order.
- (3) Copy of Customer Warranty Statement / Certificate.
- (4) Delivery Receipt.
- (5) Pre-Delivery Inspection Checklist

## **12. MANUALS:**

An Owner's Manual for each piece of equipment that covers routine maintenance, operating instructions, and safety information should be delivered with each item ordered. This may also include brochures, decals, pamphlets, etc. regarding the safety, operation, and maintenance requirements of the item. Should someone need service or maintenance manuals for some reason, they can coordinate the purchase of those with the local Dealer on a case-by-case basis.

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### **13. DELIVERY TIME:**

As to Delivery time, **provide your BEST ESTIMATE of future delivery days** (this is what is in Column K - Delivery Days in the Catalog Excel spreadsheet.) The 45 days mentioned in Section 18 below is more to provide an **ESTIMATE** of Delivery time to the ordering Agency. It is understood that there are seasonal and economic factors that can impact Delivery times. What the Commonwealth is trying to avoid is that a Dealer would 'promise' delivery of an item in 30 calendar days, knowing full well that it won't be delivered for 60 - 90 calendar days. These instances are where the 1% penalty is imposed (in some cases.) The Commonwealth is agreeable to working these longer-than-normal-delivery issues, once notified, as they arise.

The Vendor agrees that when delivery is not made within the contracted due date that one percent (1%) per day will be deducted from the Vendor's invoice for each day the Vendor fails to meet the contracted delivery date.

### **14. VENDOR HOTLINE:**

The Manufacturer shall include a toll free hotline telephone number so that Commonwealth representatives may be able to contact the Manufacturer when there is a potential issue or concern. In many cases the local Dealer should be capable of solving the situation.

**Each Manufacturer shall have a program in place to assist the Commonwealth in any current or future equipment or safety related recall or issues due to design, warranty, performance, or other factor. The Commonwealth shall be assured that any item involved in one of these recalls shall be processed through the appropriate recall process AT ANY of the participating Dealer locations.**

### **15. THE FOLLOWING INFORMATION WAS ISSUED DURING THE PREVIOUS TRACTOR / MOWER BID AND MASTER AGREEMENT PERIODS AND IS STILL PERTINENT INFORMATION:**

#### **VENDOR QUESTION #1:**

Acceptance - The Bid specs do not spell out exactly when the customer will inspect and accept the Mower. The specs simply indicate that delivery does not constitute acceptance. Due to the Mower being delivered to the Mower Dealer, separate from the Tractor, the following is proposed:

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Acceptance - Inspection and acceptance of the Mower is to be made within 10 (calendar) days of delivery of the Mower to the Mower Dealer. Payment for the Mower is to be made within 30 (business) days of acceptance.

Installation charges would be a separate line item, and payment for it would be 30 (business) days after acceptance of the mounted unit.

The payment of the three items (Tractor, Mower, and Installation) are all separate items, and payment for each needs to be clearly defined in the Master Agreement.

#### **COMMONWEALTH RESPONSE #1:**

The Inspection and Acceptance of the Mower shall be made within ten (10) calendar days of delivery of the Mower to the Mower Dealer. This Inspection and Acceptance shall be completed by representatives of the ordering Agency / Local Government entity at the Mower Dealer's location. The Mower Dealer is responsible to notify the ordering Agency that the Mower has been delivered. Payment for the mower is to be made within thirty (30) working days of acceptance. The Warranty period of the Mower shall not start until the Mower has been installed and returned back to the ordering Agency.

Installation charges can be addressed through a separate Line Item on the Master Agreement. Payment again would be made within thirty (30) working days of acceptance of the mounted unit.

Payments are indeed separate items. Individual payments for each item shall be completed as specified in the Terms and Conditions of the Solicitation and follow on Master Agreement.

#### **VENDOR QUESTION #2:**

What is the Commonwealth's version of a Manufacturer catalog?

#### **COMMONWEALTH RESPONSE #2:**

By Manufacturer's catalog the Commonwealth is looking for a booklet or pamphlet that contains information as to part number, model number, descriptive information, pictures of equipment, specifications, technical data, applications, etc. Each Manufacturer's catalog may be unique as to layout and content.

Manufacturer / Dealer should state if they will offer an early payment option (i.e. ½% if paid with 10 calendar days).

#### **VENDOR QUESTION #3:**

How many dealers must a Manufacturer have in the State in order to be considered a

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### **COMMONWEALTH RESPONSE #3:**

A Manufacturer shall have at least one (1) Dealer representative in the State in order to perform service and warranty work on the equipment as well as to provide technical information to the Agency as required. If there are numerous locations, the ordering agency may select whichever Dealer they choose. This may be based on past performance, service work, repair parts availability, location proximity, etc.

### **VENDOR QUESTION #4:**

When can a Manufacturer increase their prices?

### **COMMONWEALTH RESPONSE #4:**

Reference Section 34 - Basis of Price Revisions, Manufacturers may not raise their prices for the first twelve (12) months of the contract. A price increase may be requested at the time that the Master Agreement is renewed. For instance, assume that this Master Agreement goes into effect September 13, 2007, with an expiration date of September 12, 2008. Prices shall remain unchanged (no price increases) during this one year period. At the time that the Renewal option is exercised (approximately August 2008) the Manufacturer may request a price increase (accompanied with industry documentation as to the percentage / amount increase.) Due to the varied times that the Manufacturer may make their internal price changes within their product categories, the actual increase may not be known or take effect until October 2008. In this case, a statement would be added to the Renewal Agreement Form stating that the Vendor would like to renew and would like a price increase to be considered in approximately October 2008. If the Commonwealth approves the price increase, another Modification would be completed in October 2008 to incorporate the new pricing. **Pricing may change (increase or decrease) but discount percentage may not. To implement this price change, the Manufacturer would increase their List Price amount. The net effect would be a price increase but with the same percentage discount.**

### **VENDOR QUESTION #5:**

Is all equipment ordered off of the Master Agreement to be shipped to Frankfort, KY?

### **COMMONWEALTH RESPONSE #5:**

Not in all cases. Shipping information will be provided on the Delivery Order or Purchase Order. The vast majority of those ordered by the Transportation Cabinet will be delivered to Frankfort, KY, with internal re-distribution completed at a later date by Cabinet personnel. Other delivery locations will be as specified by the ordering Agency / Local Government.

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#### **VENDOR QUESTION #6:**

Where do the Purchase Orders (or Delivery Orders) go? Do they get faxed to the Manufacturer? Do they go to the local Dealer?

#### **COMMONWEALTH RESPONSE #6:**

Purchase Orders / Delivery Orders will be faxed / mailed to the address in the Solicitation's Vendor address box on the front page of the Solicitation. This address is the same as that of the Master Agreement award. The Manufacturer may pass this order information on to their local Dealer.

**Vendors may wish to include a Line Item for items such as: pre and post installation Delivery and pick-up of equipment (for when a Mower is delivered to a Dealer for installation) (this may be at a per mile rate), delivery charge, installation and set-up costs, etc.**

#### **VENDOR QUESTION #7:**

Where are the Mowers to be shipped?

#### **COMMONWEALTH RESPONSE #7:**

In some cases, the Mowers are to be shipped to the INSTALLING Mower Dealer's location. This should be specified on the Delivery Order / Purchase Order. This is to help prevent unnecessary transporting of the equipment prior to actual Mower installation to the Tractor. Mowers shall be installed by qualified / certified installation personnel of the Mower Dealer. This is to ensure that the installation is performed properly as well as to not void the Mower warranty due to improper installation. Should an Agency or local government desire the Mower to be shipped to an address different than the Mower Dealer, they should specify this on the order. Be aware of the additional shipping costs and warranty issues that may arise later on should this be done.

#### **VENDOR QUESTION #8:**

What type and extent of equipment training is required?

#### **COMMONWEALTH RESPONSE #8:**

Manufacturer shall provide equipment training through the local Dealer on all new equipment purchased. This training shall cover operational, maintenance, technical, and safety issues, and any other area that may be applicable. Training may range from 1 hour to 8 hours or more, depending on the type of equipment and the level of expertise of the ordering Agency personnel. This training shall be coordinated directly

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between the Dealer and the ordering Agency as to training location, date, length of training session, and areas covered.

### **VENDOR QUESTION #9:**

Will this Master Agreement also cover Leasing of Tractor and Mower equipment? Will it cover Rental of Tractor and Mower equipment?

### **COMMONWEALTH RESPONSE #9:**

This Master Agreement shall provide for Leasing and Rental of equipment if the Manufacturer or Dealer offers them. This shall be accomplished through individual quotes from the Manufacturer / Dealer as to length of Lease / Rental period, type of equipment, number of hours used per period. Agencies may Lease / Rent equipment off of this Master Agreement after receiving a quote for Lease / Rent.

This is an example of how a Lease / Rental document could be arranged:

Maximum of 300 hours use.

**Minimum lease term of 9 months.**

PTO H.P. Category	Cost Per Hour / Each Unit	Excess Use Charge Per Hour / Each Unit <b>Over 300 Hours</b>
45 – 70 PTO H.P.	\$ _____	\$ _____
71 – 90 PTO H.P.	\$ _____	\$ _____
91 - 115 PTO H.P.	\$ _____	\$ _____
116 - 160 PTO H.P.	\$ _____	\$ _____

\* Rental Tractor specifications to be approved by both parties prior to issuance of Delivery Order / Purchase Order.

\* Rental Tractors provided will meet or exceed minimum specifications required.

\* Lessee shall assume all responsibility against loss.

\* The Agency will be responsible for the expense of abuse or damage to the unit beyond normal expected wear.

\* The Agency will furnish fuel, lubricant, oil filters, other filters, and normal maintenance expenses.

\* Standard manufacturer's color.

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\* Vendor will be responsible to have Tractor properly set-up, pre-delivery inspected, and delivered to the appropriate Agency as specified on the Delivery Order / Purchase Order.

\* Tractors shall be the Manufacturer's latest current production models unless otherwise agreed upon.

\* At the end of the rental period, Tractors shall be made available by the Agency for return, washed and cleaned, with only reasonable wear and tear.

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**Agency Name, Signature, & Date**

**Agency Name, Signature, & Date**

**VENDOR QUESTION #10:**

Will this Master Agreement also allow for trade-in of equipment?

**COMMONWEALTH RESPONSE #10:**

This Master Agreement shall provide for trade-in of used equipment. This shall be accomplished through individual equipment appraisals to be completed at time of trade-in. Agencies and local governments may trade-in equipment if they deem it worthwhile and of value to the Commonwealth. Agencies must also provide proper documentation through FAC Surplus property. Please reference Finance Administrative Policy (FAP) FAP 111-53-00 (Pre-owned and Reconditioned Equipment and Products) and FAP 111-54-00 (Trade-in Purchases) for additional information and clarification.

**VENDOR QUESTION #11:**

What if someone has a Tractor model that a Mower manufacturer doesn't currently have a Mower to mount to it?

**COMMONWEALTH RESPONSE #11:**

It is stressed that at this time, Mower manufacturers may not have a Mower model that will mount to every conceivable Tractor manufactured currently or in the past. Agencies and Local Governments should consult with the Mower manufacturer or local Dealer to **ensure that the requested Mower and Tractor are on the Manufacturer's Approved Mounting List. This will ensure that both items of equipment are properly matched and able to be installed successfully.**

The Percent Discount off of List Price applies to all Mower mounting kits that have

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already been designed. Should a new model mounting kit be requested that the Manufacturer does not currently produce, the Manufacturer may design it for the Agency but these initial design and associated costs would be at an additional expense to the Agency. This new mounting kit could then be added to the catalog of items available on the contract.

#### **VENDOR QUESTION #12:**

Who pays to have the Mower removed and re-installed when the Tractor requires warranty or service work?

#### **COMMONWEALTH RESPONSE #12:**

The Agency is responsible to determine if the Tractor manufacturer is responsible for paying labor costs involved in taking the Mower off and reinstalling it when required to perform work on the Tractor. These costs may be paid by the Tractor Manufacturer or if not, will be paid by the Agency. This area should be discussed by the Agency and the Tractor dealer representatives when purchasing new Tractors as far as looking at the total cost of the equipment.

### **Section 9**

#### **Equipment Delivery**

Unless otherwise specified in this Master Agreement, delivery is **requested** within thirty (30) calendar days from receipt of Delivery Order after award of Master Agreement.

Sooner delivery is requested whenever possible. In some cases, staggered delivery dates may be requested. It is understood that providing a firm delivery time may be somewhat out of the hands of the Dealers due to heavier demand, plant shutdown, etc.

When delivery is not made as provided in this Master Agreement, the Office of Procurement Services reserves the right to:

- 1) purchase the equipment on the open market, with any cost in excess of the contract price paid by the Vendor. Failure of the Vendor to meet contract delivery dates may also be cause for cancellation, removal from eligibility for future contracts, or both, or
- 2) the Vendor agrees that when delivery is not made within the contracted due date that one percent (1%) per day will be deducted from the Vendor's invoice for each day the Vendor fails to meet the contracted delivery date.

The Commonwealth reserves the right to determine which of the above options is in its best interests.

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Equipment delivery shall be between the hours of 8:00 AM and 4:00 PM (prevailing time) weekdays only (Saturday, Sunday and State Holidays excluded).

**Note: No deliveries or shipments shall be made against this Master Agreement unless the Vendor has received an official 'Delivery Order / Purchase Order' from an Agency or the proper document from a Local Government, School, or University.**

## **Section 10**

### **Equipment / Condition**

Unless otherwise indicated in this Master Agreement, it is understood and agreed that any item offered or shipped on this Master Agreement shall be new and the latest or current year model and be in first class condition. Any unit failing to meet the foregoing requirements shall be returned to the Vendor, at their expense, and replaced with a new unit.

## **Section 11**

### **Inspection**

All equipment, supplies, and services shall be subject to inspection or tests by the Commonwealth prior to acceptance. In the event equipment, supplies, or services are defective in material or workmanship or otherwise not in conformity with specified requirements, the Commonwealth shall have the right to reject the items or services or require acceptable correction at the Vendor's expense.

## **Section 12**

### **Equipment Acceptance**

Acceptance of the equipment at the point and time of delivery shall not be interpreted as an indication by the State that the equipment received is acceptable. Final acceptance and authorization for payment shall only be given after a thorough inspection has determined that the equipment is in accordance with specifications.

**The Vendor is advised that in the event that the delivered equipment differs in any respect from the specifications, then, and in that event, payment to the Vendor will be withheld until such time as Vendor takes necessary corrective action. The Office of Procurement Services (OPS) may at its discretion refuse to accept delivery of the equipment, in which case the equipment shall remain the property of the Vendor and the State shall not be liable for payment of any nature. Should a representative of the State agree to accept any equipment with items of equipment or parts missing on the condition that said missing items will be furnished by the Vendor, then, and in that event, the Vendor is to understand that payment(s) for the equipment will be withheld until the missing items are**

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delivered and installed.

## Section 13

### Payment

Payment(s) shall be made after delivery of the equipment. Partial payments are authorized when multiple items are ordered at one time or under other circumstances when deemed necessary. This is due to possible different number of delivery days (depending on the equipment model), request for staggered deliveries, and availability from the Manufacturer, and production order lead-time.

Under Kentucky Revised Statute (KRS) 45.454 – Penalty for Late Payment, it states – ‘An interest penalty of one percent (1%) of any amount approved and unpaid shall be added to the amount approved for each month or fraction thereof after the thirty (30) working days which followed receipt of the goods or services or Vendor’s invoice by a purchasing agency.’ **Payment will be made upon delivery and acceptance of equipment.** This time may be different than when an invoice is received. For example, a vehicle is ordered on February 1<sup>st</sup> with delivery scheduled for May 1<sup>st</sup>. An invoice is mailed and received on Feb 15<sup>th</sup> stating the 30 days for payment. The vehicle is received and accepted at the Agency location on May 1<sup>st</sup>. Agency payment target date is June 15<sup>th</sup> (30 working days after receipt of equipment) and not April 2<sup>nd</sup> (30 working days after the invoice was received.) Should the agency not pay for the vehicle until June 30<sup>th</sup>, the Agency would be liable for the 1% late payment penalty fee. The key date in this issue is the latter of the receipt date of the invoice or the receipt and acceptance date of the equipment. The 30 working day payment window starts on the latter of these two dates.

Example 1 - The equipment is received on May 1<sup>st</sup> the invoice is received on May 15<sup>th</sup>, the due date for payment will be 30 working days from the date that the invoice was received.

Example 2 - The invoice is received on May 1<sup>st</sup>, part of the order is received on May 15<sup>th</sup>, the remainder of the order is not received until May 30<sup>th</sup>, and the due date for payment of the invoice is 30 working days from May 30<sup>th</sup>.

Example 3 - If any piece of equipment is not correct or if the invoice is not correct, the 30 working days should not start until everything is correct and acceptable.

## Section 14

### Vendor’s Report to the Commonwealth Buyer

The Vendor shall furnish the Commonwealth Buyer, Office of Procurement Services (OPS), a consolidated Consumption Data Report showing the equipment volume (by equipment model and / or option item code), detailed by State Agency,

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**Political sub-division, or School District which has been sold to the Commonwealth and its using Agencies for each six (6) month period of the Master Agreement. This report will also include all Political subdivisions, School District, and University purchases.** This report shall include sales of all types. Please report as completely and accurately as possible. This Report may be in the form of the Vendor's computer printout sheet or form. This shall apply to all items, which are to become a part of this Master Agreement. This Report must reference usage by contract item number, brief description and product codes (if available) or other format designated by the Office of Procurement Services (OPS ). The Commonwealth Buyer will assist the Vendor with data format and essential information required in the report. **Reports are due to the Commonwealth Buyer No Later Than (NLT) January 15<sup>th</sup> and July 15<sup>th</sup> of each year while the Master Agreement is in effect.** The Office of Procurement Services (OPS) will enforce this requirement. Failure to submit these reports may be just cause for cancellation of the Master Agreement.

## Section 15 Warranty

The equipment Manufacturer or Dealer's most favorable warranties offered to preferred customers shall apply to all items. A copy of such warranty(s) shall be furnished to the Agency (if so requested) upon delivery of the equipment or product. The Vendor shall furnish factory warranty on all equipment furnished hereunder against defect in material and / or workmanship. Should any defect in materials or workmanship, excepting ordinary wear and tear, appear during the above stated warranty period, the Vendor shall repair or replace same at no cost to the State immediately upon written notice from the State Agency possessing the equipment. The Vendor will not be liable under the above warranty for any defects or damages resulting from unforeseeable causes beyond the control and without the fault or negligence of the Vendor, such as misuse or neglect by the State, acts of God, fires, floods and hurricanes. Warranty papers shall accompany equipment.

The standard warranty that the Manufacturer provides is satisfactory. This may also be known as the Manufacturer's standard net state warranty. The Commonwealth requires that the primary or standard Manufacturer warranty apply and not a warranty with less coverage. **Manufacturer or Dealer should provide the Buyer a copy of their warranty(s) for the equipment Line Items on their Catalog.** This will be in addition to furnishing a copy of the warranty at each sale to the Agency upon delivery of the equipment or product. The Commonwealth Buyer shall maintain a copy of the warranty(s) and provide them to the Agency, School District, or Local Government as requested.

## Section 16

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### **Product Warranty or Recall Procedure**

The Manufacturer shall have a program in place to assist the Commonwealth in any current or future equipment warranty or recall due to design, performance, warranty, or other factor.

**The Commonwealth requires an INITIAL notification within forty-eight (48) hours of all warranty issues or recalls.** This notification shall consist of an E-mail or a faxed letter to the Commonwealth representative(s) stating briefly what the situation is and what product(s) it affects. Within two (2) calendar weeks from this initial notification, more detailed information shall be supplied to the Commonwealth representative(s) to include what products are affected, what the warranty or recall plan is, how it is to be executed, and what time frame is anticipated to accomplish it. The Commonwealth shall be assured that any item involved in an equipment warranty or recall shall be processed through the appropriate warranty or recall process at the Manufacturer's location or at any of the Manufacturer's participating Vendor locations. Warranty or Recall issues shall be for those initiated by the (1) equipment Manufacturer, (2) suppliers to the equipment Manufacturer, (3) governmental agencies, and (4) other sources of warranty or recall notification. It is understood that notification from the preceding sources 2 through 4 may take additional time. The intent of this is to provide notification to the Commonwealth of any potential safety or hazardous issues before they affect someone. The Commonwealth shall provide information (Agency contact name, phone number, fax number, and email address) for the Commonwealth's representative(s) to each Vendor awarded a Master Agreement.

## **Section 17**

### **Manufacturer Customer Service Hotline**

The Manufacturer / Vendor shall include a toll-free hotline telephone number so that Commonwealth representatives may be able to contact the Manufacturer when there is a potential issue or concern. The Commonwealth requests this toll-free Customer Service hotline so that Commonwealth representatives may call to get generic information. This number is not necessarily the number that can answer all questions but is a starting point towards getting the correct answer (i.e. warranty issue, new product information, etc.)

## **Section 18**

### **Firm Pricing**

The Manufacturer's Bid percentage discount must be firm except as otherwise provided in this Master Agreement.

## **Section 19**

### **Price Quotes**

All pricing and percentage discounts shall be FOB Destination, Freight Prepaid and

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Added (in those cases where it is applicable.) Percentage discounts shall be complete. The percentage discounts shall include warranties.

## **Section 20**

### **Tax Exempt Status**

Manufacturer or Dealer should not include Federal Excise Tax, Kentucky Sales, or Use Tax in pricing or invoicing (or in applying the percentage discount to the List price) once an order has been received and invoiced.

## **Section 21**

### **Post Contract Agreements**

This Master Agreement shall constitute the entire agreement between the State and the awarded Manufacturer. Unless contractually provided, State agencies utilizing this Master Agreement will not be required to enter into nor sign further agreements, leases, company orders or other documents to complete or initiate the terms of this Master Agreement. Any such documents so obtained will be non-binding on the State and agents of the State and will be cause for breach of contract.

## **Section 22**

### **Equipment / New Technology**

All equipment must be a new and / or current model. The Commonwealth recognizes the rapid advancement of technology. If the Manufacturer / Dealer can provide new equipment of advanced technology after the award of the Master Agreement, the Commonwealth and the Vendor may choose by mutual agreement to install such equipment. The price of the new technology equipment cannot exceed the cost of the award contract.

## **Section 23**

### **Addition or Deletion of Items or Services**

The Office of Procurement Services (OPS) reserves the right to add new and similar items, with the consent of the Vendor, to this Master Agreement. The Office of Procurement Services (OPS) will issue a Contract Modification to effect this change.

## **Section 24**

### **Basis of Price Revisions**

Pricing or percentage discounts shall remain firm for the initial period of this Master Agreement. Upon renewal, prices are subject to revision, which may be either increases or decreases. Contract product and updates shall be provided by the Manufacturer in a Microsoft Excel spreadsheet for electronic import into the electronic catalog. These updates shall be provided to the Office of Procurement Services on a regular basis; however, no more frequent than every sixty days. This required template format may be seen at

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<http://mars.ky.gov/vendorcatalogtemplate.htm>. Revisions may be requested by either of the contracting parties and must be requested in writing. The requesting party must furnish documented evidence substantiating the validity of the request. In the event the requested revision is refused, the requesting party shall have the right to withdraw from the contract, without prejudice. Provided, however, that the Vendor must continue service, at the contract prices, until a new contract can be established (approximately 90 days).

## Section 25

### Quantity Basis of Contract – Estimated Quantities

Any and all quantities mentioned in Request For Bid (RFB) / Solicitation RFB 758 0700001787 are purely estimates, and are not to be implied nor inferred as being guarantees. The State is obligated to buy only that quantity needed by its agencies during the term of this Master Agreement. Requirements may exceed the quantities shown and the Manufacturer shall be required to furnish all requirements shown on Delivery Orders or Purchase Orders dated during the life of the contract.

## Section 26

### Exception to Required Use of Contract

The establishment of this Master Agreement is not intended to preclude the use of similar products when requested by the agency. The Commonwealth of Kentucky reserves the right to contract for large requirements on the open market.

## Section 27

### Minimum Order Option

Subject to any specific limitations elsewhere in this Master Agreement, when a State agency requires supplies or services covered by any Master Agreement in a total amount of less than \$1,000, the agency shall not be obligated to place such order under the Master Agreement and retains the option to purchase by other means.

## Section 28

### FOB Basis of Shipment – Vendor Responsible

The Manufacturer / Dealer shall be fully responsible for all shipments FOB Destination, Freight Prepaid and Added (where applicable.) FOB Destination in this Master Agreement refers to the Agency and / or Local Government entity placing the order. Quotations of percentage discounts on this Master Agreement shall be FOB Destination.

## Section 29

### Funding-Out Provision

Other provisions of this Master Agreement not-with-standing, the Vendor agrees, if funds are not appropriated to the Agency or are not otherwise available for the purpose

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of making payments hereunder, then the Agency shall be authorized, upon sixty (60) calendar days written notice to the Vendor, to terminate this agreement without obligation for the payment of any cancellation or termination charges which may be fixed by the agreement without any other obligation or liability hereunder.

## **Section 30**

### **Cancellation Clause – 30 Days Notice**

The Commonwealth may cancel this Master Agreement by giving written notice thirty (30) calendar days prior to effective cancellation date.

## **Section 31**

### **Termination of Contracts**

The Commonwealth reserves the right to terminate contracts for convenience when requirements under the contract no longer exist. A written notice will be given to the Vendor at least thirty (30) calendar days prior to such proposed termination date.

## **Section 32**

### **Service Performance**

All services performed under this Master Agreement shall be in accordance with the terms and provisions of the Master Agreement. It will be the Agency's responsibility to ensure that such services rendered are performed and are acceptable.

**Major deviations of services performed will not be made without the written approval of the Office of Procurement Services (OPS). Problems, which rise under any aspect of performance, should first be resolved between the Vendor and the Agency. Either party should refer in writing any such problems and/or disagreements that cannot be resolved to the Office of Procurement Services (OPS) for settlement.**

## **Section 33**

### **Recycle Requirements**

The Manufacturer / Dealer is required to comply with the Recycle Requirements for the purchase of goods, supplies, equipment, materials and printing with a minimum recycled content to the extent practicable per 200 KAR 5:330. This regulation can be viewed on the Internet at <http://www.lrc.state.ky.us/kar/200/005/330.htm>.

## **Section 34**

### **Advertising**

Each unit shall be entirely free of any and all advertising attachments of the Manufacturer or Vendor such as decals, clips, or any other devices bearing Vendor's name or logo.

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Manufacturer / Dealer provided safety, operating instruction, instructional, maintenance, or informational labels are allowed on the equipment.

## **Section 35**

### **Agreement between Parties**

By submitting a response to Request For Bid (RFB) / Solicitation RFB 758 0700001787, the Vendor acknowledges and agrees to be bound by the terms and conditions of the RFB / Solicitation.

The Vendor agrees that this Master Agreement is the complete and exclusive statement of the agreement between the parties, which supersedes all prior agreements, oral or written, and all other communications between the parties relating to the subject matter of this Master Agreement. It is further agreed between the parties, that any valid modification of contractual agreement must be formalized by issuance of a Master Agreement Modification from the Office of Procurement Services (OPS).

## **Section 36**

### **Governmental Restrictions**

In the event any Governmental restrictions may be imposed which would necessitate alteration of the material, quality, workmanship, or performance of the items offered on this proposal prior to delivery, it shall be the responsibility of the Vendor to notify the Office of Procurement Services in writing, indicating the specific regulation which requires such alterations. The Commonwealth reserves the right to accept any such alterations, including any subsequent price adjustments, or to cancel the contract.

## **Section 37**

### **Federal Tax Exempt Purchases by the Commonwealth of Kentucky**

Contracts Direct With Manufacturer: In the event a Manufacturer bids direct and is awarded a contract, the Office of Procurement Services shall request the Vendor to furnish evidence of registration with the U.S. Internal Revenue Service. This registration shall be in accordance with the 'Temporary Rules, 1958 Excise Tax Act'. After such registration, individual Excise Tax Exemption Certificates are not necessary on each individual order issued against the contract by the Office of Procurement Services. Therefore, quoted prices must be exclusive of Federal Excise Taxes.

Contract With Other Than Manufacturer: If the Vendor is other than the Manufacturer, the Office of Procurement Services will furnish a Tax Exemption Certificate with each individual order issued against this contract. Therefore, quoted prices must be exclusive of Federal Excise Taxes.

## **Section 38**

### **ALL PROVISIONS OF REQUEST FOR BID (RFB) / SOLICITATION 758 0700001787**

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**SHALL BE PART OF THIS MASTER AGREEMENT.**